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## WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

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### CLEARINGHOUSE RULE 14-048

#### Comments

**[NOTE:** All citations to “Manual” in the comments below are to the Administrative Rules Procedures Manual, prepared by the Legislative Reference Bureau and the Legislative Council Staff, dated November 2011.]

#### 2. Form, Style and Placement in Administrative Code

a. The introductory clause should be carefully reviewed and revised to reflect changes made in the proposed rule as a result of the comments in this report. The agency should follow the guidelines and example in s. 1.02 (1), Manual.

b. In SECTIONS 1 to 5, when inserting a new subsection between two existing subsections, the agency should consider leaving more space for future insertions. [s. 1.03 (5) (b), Manual.] For example, s. NR 5.001 (2a) should be numbered s. NR 5.001 (2m).

c. In s. NR 5.001 (2a), the colon should be preceded by the phrase “all of the following” or “any of the following”, whichever is more appropriate. In addition, the numbered subparts of that subsection should be separate paragraphs, with each paragraph ending in a period. Lastly, parentheses should not be used. [ss. 1.01 (6) and 1.03, Manual.]

d. In the treatment clause for SECTION 3, “5.01” should be replaced with “5.001”.

e. SECTIONS 6, 7, and 8 should be omitted from the proposed rule. The singular form of the words that are amended in those SECTIONS should be retained because the singular form is generally used in drafting. In addition, “(s)” should not be used to indicate that a word may be singular or plural. [s. 1.01 (9) (e), Manual.] If the agency does not omit SECTIONS 6, 7, and 8, the text of SECTION 7 should accurately reflect the text of the existing rule.

f. SECTIONS 9 to 12 appear to require an applicant to provide unique identification information for each vessel owner who applies for a certificate of number, which must be one of

the pieces of information described in SECTIONS 10 to 12. If this is correct, the treatment clauses should read:

- (1) SECTION 9. NR 5.01 (1) (cm) is created to read:
- (2) SECTION 10. NR 5.01 (1) (cm) 1. is created to read:
- (3) SECTION 11. NR 5.01 (1) (cm) 2. is created to read:
- (4) SECTION 12. NR 5.01 (1) (cm) 3. is created to read:

In addition, s. NR 5.01 (1) (cm) should be reworded as an introduction. As such, it should contain the phrase “any of the following” and end in a colon. The subdivisions should end in periods and not use “or”. [s. 1.03 (3) and (4), Manual.]

g. SECTIONS 15 to 19 relate to hull identification numbers, and the SECTIONS are organized so that SECTION 15 serves as an introduction to SECTIONS 16 and 19 and SECTION 16 serves as an introduction to SECTIONS 17 and 18. However, the text of the introductions do not follow the format in s. 1.03 (3), Manual. The SECTIONS should be reorganized in a more logical manner. Perhaps, the text of SECTIONS 15, 16, and 19 could be combined and reworded to form s. NR 5.06 (5), with a phrase such as “all of the following”. That introduction could lead into the text of SECTIONS 17 and 18, which could be numbered s. NR 5.06 (5) (a) and (b).

h. In the treatment clause for, and text of, SECTION 20, “5.09 (3) (a)” should be replaced with “5.09 (3) (b)”. In addition, the last sentence in the text should not be underscored because it is not new material. [s. 1.06 (1), Manual.]

i. In SECTIONS 21 and 22, is the intent to repeal s. NR 5.11 (2) or to create a new table in that subsection? If the intent is to repeal s. NR 5.11 (2), the SECTIONS should be combined into a single SECTION with the following treatment clause: “NR 5.11 (2) is repealed.”. However, if the intent is to replace the existing table with the newly created table in SECTION 28, the newly created table should be placed in SECTION 21 (not SECTION 28) and the treatment clauses should read:

- (1) SECTION 21. NR 5.11 (2) (intro.) is amended to read:
- (2) SECTION 22. NR 5.11 (2) (a) to (e) are repealed.

j. In SECTION 23, “5.125 (1) (c)” should be replaced with “5.125 (1) (b)”. In addition, “J34a” should be replaced with “~~J34a~~ J34”. [s. 1.06 (2), Manual.]

k. In SECTION 24, “5.125 (1) (b)” should be replaced with “5.125 (1) (c)”.

l. In SECTION 27, “NR 5.125 Note” should be replaced with “NR 5.125 (1) (Note)” in the treatment clause. In addition, in the text of the note, “J34a” should be replaced with “~~J34a~~ J34”. [s. 1.06 (2), Manual.]

m. In SECTION 28, “(intro.)” should be inserted after “NR 5.13 (1)” in the treatment clause. In addition, “but not limited to” should be stricken-through because the phrase is unnecessary. [s. 1.01 (7) (d), Manual.]

n. In SECTION 29, “(intro.)” should be inserted after “NR 5.13 (2) (a)” in the treatment clause. In addition, the introduction should use a phrase such as “all of the following”. [s. 1.03 (3), Manual.] Lastly, the underscoring following “unless” should be omitted.

o. In s. NR 5.13 (2) (a) 1., the text of the subdivision should read: “~~Type I PFD~~ At least one wearable PFD is on board for each person.”. [s. 1.03 (4), Manual.]

p. In s. NR 5.13 (2) (a) 2., the text of the subdivision should read: “~~Type II PFD~~ Each PFD is used in accordance with any requirements on the approved label.”. [s. 1.03 (4), Manual.]

q. In s. NR 5.13 (2) (b), “total number of wearable PFDs” should be replaced with “PFD’s total number of wearable PFDs”. [s. 1.06 (1), Manual.]

r. In SECTION 35, the renumbering of s. NR 5.13 (2) (d) is unnecessary. In addition, the words “vessel” and “vessels” should be underscored. [ss. 1.03 (5) and 1.06 (1), Manual.]

s. In SECTION 38, “(intro.)” should be inserted after “5.13 (4)” in the treatment clause. In addition, the introduction should use a phrase such as “any of the following” or “all of the following”, whichever is more appropriate. [s. 1.03 (3), Manual.]

t. In s. NR 5.13 (4) (c), the period in the existing text should be retained. In addition, the paragraph should use a phrase such as “any of the following” or “all of the following”, whichever is more appropriate. [ss. 1.03 (3) and 1.06 (4), Manual.]

u. In s. NR 5.13 (4) (c) 2. and 5., each subdivision should end in a period. [s. 1.03 (4), Manual.]

v. In SECTION 47, it appears that the treatment clause should read: “NR 5.13 (4) (d) is created to read:”. In addition, “Durability of marking.” in the text should be omitted. The other paragraphs in sub. (4) do not contain titles. [s. 1.05 (1), Manual.]

w. In s. NR 5.13 (5), the title should follow the format in s. 1.05 (2) (c), Manual. In addition, the period in the existing text should be retained. [s. 1.06 (4), Manual.]

x. SECTIONS 50 to 52 should be combined into a single SECTION with the following treatment clause: “NR 5.13 (6) is created to read:”. In addition, the title of sub. (6) should follow the format in s. 1.05 (2) (c), Manual.

y. SECTION 53 should either: (1) amend s. NR 5.17 and underscore the new text; or (2) renumber s. NR 5.17 as s. NR 5.17 (1) and create s. NR 5.17 (2) with the new text. [s. 1.03 (1), Manual.]

z. The effective date section should be labeled “SECTION 55.”. In addition, the following text should be omitted: “OR This rule shall take effect on [DATE].”. [s. 1.02 (4), Manual.]

#### **4. Adequacy of References to Related Statutes, Rules and Forms**

a. In the statute interpreted and statutory authority sections of the rule summary, it appears that “30.62 (d) 2, 30.62 (d) 3, 30.62 (2) (d) 3” should be replaced with “30.62 (2) (d) 2. and 3.”.

b. In the plain language analysis of the rule summary, the agency should provide citations to the “federal requirements” and “federal regulations” that are referenced.

c. In s. NR 5.001 (11c), the period after “46” in the citation to federal law should be omitted. [s. 1.07 (3) (b), Manual.]

d. In s. NR 5.001 (16a), are the references to performance types intended to be the exclusive list of types that qualify as a throwable PFD, or are they examples of types that qualify? If the list is the exclusive list, that should be made clear. If the list serves as examples, the second sentence should read: “A ‘throwable PFD’ includes a PFD marked as ...”. This comment also applies to s. NR 5.001 (17a).

e. In s. NR 5.06 (5), “, Stats.” should be inserted after “s. 30.533 (2)”. [s. 1.07 (2), Manual.]

f. In SECTION 53, “, Stats” should be inserted after “s. 30.50 (9b)”. [s. 1.07 (2), Manual.]

## **5. Clarity, Grammar, Punctuation and Use of Plain Language**

a. In s. NR 5.001 (2a), the words “current” and “appropriate” should be avoided. [s. 1.01 (9) (b) and (c), Manual.] Instead of the word “current”, the agency should specify a particular edition to which the rule applies. The word “appropriate” is vague; the agency should provide more detail about which chart should be used.

b. In s. NR 5.001 (11c), “Personal flotation device” and “PFD” should be in quotation marks. This comment also applies to “Throwable PFD” in s. NR 5.001 (16a); “Visual distress signal” in s. NR 5.001 (16b); and “Wearable PFD” in s. NR 5.001 (17a). [s. 1.01 (7), Manual.]

c. In s. NR 5.001 (11c), what is the “USCG Commandant”? The agency should consider defining the phrase and should define the acronym “USCG”. [s. 1.01 (7) and (8), Manual.] This comment also applies to s. NR 5.001 (16b).

d. In s. NR 5.01 (1) (c) 1. c., what is a “unique number”? The agency should provide more detail to help the reader understand the phrase.

e. In s. NR 5.06 (5) (a), “two (2)” should be replaced with “2”. Similarly, in s. NR 5.06 (5) (a) 1., “two” should be replaced with “2” on lines 2 and 4. [s. 1.01 (5), Manual.]

f. In s. NR 5.06 (5) (a) 1., the slashed alternative “hull/deck” on lines 2 and 5 should be avoided and replaced with “and” or “or”, whichever is more appropriate. [s. 1.01 (9) (a), Manual.]

g. In s. NR 5.09 (3) (a), “Department” should not be capitalized. [s. 1.01 (4), Manual.]

h. In s. NR 5.13 (4) (c) 4., the slashed alternative “name/number” should be avoided and replaced with “and” or “or”, whichever is more appropriate. [s. 1.01 (9) (a), Manual.]

i. In s. NR 5.13 (6) (a), the quotation marks surrounding “efficient” should be omitted. In addition, parentheses and slashed alternatives should not be used. [s. 1.01 (6) and (9) (a), Manual.]

j. In s. NR 5.13 (6) (b), “the vessel” should be inserted after “In addition,” and “(bell size” should be replaced with “. The bell size shall be”.

k. In s. NR 5.33 (4), “and/or” should be replaced with “or”. [s. 1.01 (9) (a), Manual.]